

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 8, 2008

STATE OF TENNESSEE v. JAMES AVERY STEWART

**Direct Appeal from the Circuit Court for Bedford County
No. 15698 - 15701 Lee Russell, Judge**

No. M2007-01309-CCA-R3-CD - Filed March 25, 2008

The defendant, James Avery Stewart, pled guilty to four counts of selling Schedule II controlled substances. He was sentenced to ten years probation. The trial court revoked the defendant's probation after he tested positive for controlled substances. The defendant was ordered to serve the balance of his sentences in confinement. On appeal, the defendant argues that the trial court improperly required the defendant to serve the balance of his sentences in confinement. Following our review of the parties' briefs, the record, and the applicable law, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which DAVID G. HAYES and ALAN E. GLENN, JJ. joined.

Michael J. Collins, Assistant Public Defender, Shelbyville, Tennessee, for the appellant, James Avery Stewart.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Charles Frank Crawford, Jr., District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

We note at the outset that the record in this case is limited and provides little information into the particular nature of the defendant's offenses to which he pled guilty. The defendant appeared before the Bedford County Circuit Court on four counts of the sale of Schedule II drugs and pled guilty to the charged offenses. He received a total effective sentence of ten years on probation. The defendant was also assessed a fine of \$2,000 for each offense. After successfully completing the Wayne County Boot Camp program, the defendant was released on supervised probation.

Several months after being placed on supervised probation, the defendant tested positive for cocaine and Tetrahydrocannabinol (THC), a substance found in marijuana. The results of the

defendant's positive drug test were subsequently confirmed by independent laboratory testing. A probation violation warrant was issued for the defendant and he was taken into custody.

A probation revocation hearing was held on the defendant's probation violation. At the probation revocation hearing, the defendant admitted that he violated the terms of his probation by using cocaine and marijuana. The defendant admitted that he had suffered from an addiction to cocaine for the past eight years. The defendant stated that he had three children and had maintained a stable job as a paint supervisor for Butler Decorating in Shelbyville, Tennessee. The defendant also admitted that he had never sought rehabilitation for his addiction. He conceded that he needed rehabilitation and asked that the court provide that assistance instead of imposing a prison sentence.

The court revoked the defendant's probation, stating, "One of the most important terms and conditions of your probation is that you remain drug free . . . it's a violation of a very, very important term of your probation. And for that reason I'm going to revoke his probation and require that he serve the balance of his sentence."

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his release. Tenn. Code Ann. § 40-35-311(e). A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). Our standard of review on appeal is whether the trial court abused its discretion in finding that a violation of probation occurred. *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991); *see also State v. Stubblefield*, 953 S.W.2d 223, 226 (Tenn. Crim. App. 1997). The appellate court is obligated to examine the record and determine whether the trial court was presented with sufficient evidence to allow him to make an intelligent decision. *Mitchell*, 810 S.W.2d at 735. In order to conclude that the trial court abused its discretion, there must be no substantial evidence to support the determination of the trial court. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). Such a finding "reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case." *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)).

The defendant argued on appeal that the sentence imposed was not the "least severe measure necessary to achieve the purpose for which the sentence is imposed." Tenn. Code Ann. § 40-35-103(4). Further, the defendant argued that "the sentence imposed should be no greater than that deserved for the offense committed." Tenn. Code Ann. § 40-35-103(2). The defendant argued that the sentence he deserved would involve a combination of split confinement and inpatient rehabilitation with regular drug counseling. The defendant alleged that the imposed prison sentences "essentially [amount] to an abuse of discretion."

Upon review of the limited record in this case, we conclude that the trial court did not abuse its discretion by ordering the defendant to serve his sentence. *See Mitchell*, 810 S.W.2d at 735. The defendant tested positive for the presence of illegal drugs and admitted that he was guilty of the offenses charged in the probation violation warrant. He offered no evidence that the trial court committed an abuse of discretion. Therefore, the defendant is without relief as to this issue.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgments of the trial court.

J.C. McLIN, JUDGE